

## ORDINANCE NO. 2181

**AN ORDINANCE AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT BETWEEN THE CITY OF GARDNER, KANSAS AND THE STATE OF KANSAS, ACTING BY AND THROUGH THE KANSAS DEPARTMENT OF TRANSPORTATION FOR THE PURPOSE OF OBTAINING A LOAN FROM THE KANSAS TRANSPORTATION REVOLVING FUND TO FINANCE A QUALIFIED TRANSPORTATION PROJECT; ESTABLISHING A DEDICATED SOURCE OF REVENUE FOR REPAYMENT OF SUCH LOAN; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS IN CONNECTION THEREWITH; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE LOAN AGREEMENT.**

**WHEREAS**, K.S.A. 75-5063 *et seq.* (the "Act") authorizes the Secretary of Transportation (the "Secretary") of the State of Kansas (the "State") to establish a transportation revolving fund to provide assistance to governmental units for Transportation Projects; and

**WHEREAS**, in accordance with the Act, the Secretary has established within the State treasury, the Kansas Transportation Revolving Fund (the "Fund"); and

**WHEREAS**, in accordance with the Act, the Secretary has promulgated administrative regulations K.A.R. 36-40-1 *et seq.* (the "Regulations") for implementation of the Fund; and

**WHEREAS**, the Secretary and the Kansas Development Finance Authority (the "Authority") have entered or will enter into a Master Pledge Agreement, as the same may be amended and supplemented from time to time (the "Pledge Agreement") pursuant to which KDOT agrees to enter into loan agreements with governmental units for the financing of Costs of certain transportation projects as defined in the Act, and to pledge the loan repayments received pursuant to such loan agreements to the Authority; and

**WHEREAS**, the Authority is authorized under K.S.A. 74-8905 and the Act to issue revenue bonds (the "Bonds") for the purpose of providing funds to enhance the Fund's ability to provide financial assistance to governmental units under the Act; and

**WHEREAS**, The City of Gardner, Kansas (the "Borrower"), is a Governmental Unit as said term is defined in the Act; and

**WHEREAS**, pursuant to the Act, the Borrower has submitted an application to KDOT to obtain a loan from the Fund to finance the costs of a Transportation Project described particularly in that certain loan agreement between the Borrower and KDOT to be dated January 3, 2006, in substantially that form as submitted to the Governing Body this date (the "Loan Agreement"), as TRF Project No. TR 0030 (the "Project"); and

**WHEREAS**, the Project is a Qualified Project as said term is defined in the Act; and

**WHEREAS**, the Borrower has taken all steps necessary and has complied with the provisions of the Act and the Regulations necessary to qualify for the loan; and

**WHEREAS**, KDOT has informed the Borrower that it has been approved for a loan in amount of not to exceed \$692,706 (the "Loan") in order to finance all or a portion of the Project Costs;

**WHEREAS**, the governing body of the Borrower hereby finds and determines that it is necessary and desirable to accept the Loan and to enter into the Loan Agreement and to complete and execute certain other documents relating thereto, and to take certain actions required in order to implement the Loan Agreement; and

**WHEREAS**, the Borrower agrees it will not use any portion of the loan proceeds including any investment earnings on such proceeds directly or indirectly in a manner that would meet the "private activity bond" tests within the meaning of Code § 141.

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS:**

**Section 1. Authorization of Loan Agreement.** The Borrower is hereby authorized to accept the Loan and to enter into the Loan Agreement, with an effective date of January 3, 2006, with the State of Kansas acting by and through the Kansas Department of Transportation to finance the Project Costs (as defined in the Loan Agreement). The Mayor of the City, (the "Mayor") and City Clerk are hereby authorized to execute the Loan Agreement in substantially the form presented to the governing body this date, with such changes or modifications thereto as may be approved by the Mayor and the Borrower's legal counsel, the Mayor's execution of the Loan Agreement being conclusive evidence of such approval.

**Section 2. Establishment of Dedicated Source of Revenue for Repayment of Loan.** Pursuant to the Act, the Borrower hereby establishes a dedicated source of revenue for repayment of the Loan, which dedicated source is described as follows: the City of Gardner, Kansas, Street Excise Tax. In addition thereto, the Borrower shall levy ad valorem taxes without limitation as to rate or amount upon all the taxable tangible property, real or personal, within the territorial limits of the Borrower to produce the amounts necessary for the prompt payment of the obligations under the Loan and Loan Agreement. In accordance with the Act, the obligations under the Loan and the Loan Agreement shall constitute "bonds" for purposes of K.S.A. 10-1116 and K.S.A. 79-5028, and not be included within any limitation on the bonded indebtedness of the Borrower.

**Section 3. Further Authority.** The Mayor, City Clerk and other officials and legal counsel of the Borrower are hereby further authorized and directed to execute any and all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance, and to make alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

**Section 4. Governing Law.** This Ordinance and the Loan Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Kansas.

**Section 5. Effective Date.** This Ordinance shall take effect and be in full force from and after its adoption by the governing body and publication in the official city newspaper.

**PASSED** by the governing body of the City of Gardner, Kansas on January 3, 2006, and approved by the Mayor.

(SEAL)

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Carol Lehman, Mayor

ATTEST:

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Gwen Scott, City Clerk

APPROVED AS TO FORM.

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James R. Hubbard, City Legal Counsel